

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD DON BROWN,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

No. 2:22-cv-01571 DAD AC

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against "a
5 governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a).
6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]
8 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

9 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal
12 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a
25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the
26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 At all times relevant to the allegations in the complaint, plaintiff was a prisoner at Mule
13 Creek State Prison. Named as defendants are the Secretary of the CDCR as well as various
14 medical providers at Mule Creek State Prison.

15 In claim one, plaintiff asserts that defendants are deliberately indifferent to his need to
16 receive his mental health medication, Seroquel, in a sustained release form rather than crushed
17 and floated in liquid as he is currently receiving it. Plaintiff indicates that the medication is less
18 effective when it is crushed and floated.

19 In his second claim for relief, plaintiff contends that the pain medication he is prescribed,
20 Lyrica, is also ineffective and that he should receive Morphine three times a day. Plaintiff asserts
21 that defendants are deliberately indifferent to his pain by failing to prescribe him with Morphine.

22 By way of relief, plaintiff requests to “be given his Seroquil meds not crushed and to be
23 put back on Morphine 30 milligrams 3 times a day not crushed...” in addition to monetary
24 compensation. ECF No. 1 at 7.

25 IV. Failure to State a Claim

26 Having conducted the screening required by 28 U.S.C. § 1915A, the court finds that the
27 complaint does not state any Eighth Amendment deliberate indifference claim against defendants.
28 First and foremost, plaintiff does not specifically link the named defendants to any specific act or

omission relating to his prescription medication. Instead, plaintiff lumps all of the defendants together and generally asserts that they were deliberately indifferent to his serious medical needs. However, the civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s federal rights.

With respect to the specific Eighth Amendment claims, the complaint alleges a difference of opinion about what specific medications plaintiff should receive for two medical problems. However, a difference of opinion about the proper course of treatment does not amount to deliberate indifference, nor does a dispute between a prisoner and prison officials over the necessity for, or extent of, medical treatment establish a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Therefore, plaintiff has not stated a colorable Eighth Amendment claim against any named medical provider at Mule Creek State Prison.

V. Leave to Amend

Since the complaint does not state any cognizable claims for relief, plaintiff will be given an opportunity to file an amended complaint. If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). The complaint must also allege in specific terms how each named defendant is involved. Arnold v. Int’l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s actions and the claimed

1 deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and
2 conclusory allegations of official participation in civil rights violations are not sufficient.” Ivey v.
3 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

4 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
5 his amended complaint complete. Local Rule 220 requires that an amended complaint be
6 complete in itself without reference to any prior pleading. This is because, as a general rule, an
7 amended complaint supersedes any prior complaints. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
8 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
9 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
10 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
11 any previous complaints no longer serve any function in the case. Therefore, in an amended
12 complaint, as in an original complaint, each claim and the involvement of each defendant must be
13 sufficiently alleged.

14 VI. Plain Language Summary of this Order for a Pro Se Litigant

15 Your request to proceed in forma pauperis is granted. That means you do not have to pay
16 the entire filing fee now. You will pay it over time, out of your trust account.

17 Your complaint will not be served because the facts you alleged are not enough to state an
18 Eighth Amendment claim based on a difference of opinion about what specific medications are
19 required to properly treat your illnesses. The Eighth Amendment does not require medical
20 providers to give you the specific medication that you request, nor does it require agreement
21 among medical providers as to what medication should be used in any particular circumstance.

22 You may amend your complaint to try to fix these problems. Be sure to provide facts that
23 show exactly what each defendant did to violate your rights or to cause a violation of your rights.

24 If you choose to file an amended complaint, it must include all claims you want to bring.
25 Once an amended complaint is filed, the court will not look at any information in the original
26 complaint. **Any claims and information not in the amended complaint will not be**
27 **considered.**

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1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
4 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
5 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
6 appropriate agency filed concurrently herewith.

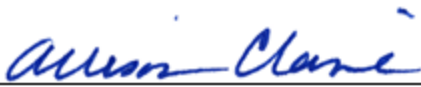
7 3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28
8 U.S.C. § 1915A, and will not be served.

9 4. Within thirty days from the date of service of this order, plaintiff may file an amended
10 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
11 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
12 number assigned this case and must be labeled "First Amended Complaint."

13 5. Failure to file an amended complaint in accordance with this order will result in a
14 recommendation that this action be dismissed.

15 6. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
16 form used in this district.

17 DATED: April 9, 2024

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19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
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